

1
2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 KENNETHA BRUNER,

8 Plaintiff,

9 v.

10 ON-SITE MANAGER, INC.,

11 Defendant.

Case No. 15-cv-04071-BLF

**ORDER DISMISSING ACTION FOR
FAILURE TO COMPLY WITH COURT
ORDER AND FAILURE TO
PROSECUTE**

12
13 Following the parties' failure to appear at the scheduled Final Pretrial Conference on
14 March 22, 2018, the Court issued an Order to Show Cause Re: Dismissal directing Plaintiff to
15 show cause why the action should not be dismissed for failure to comply with a Court order and
16 failure to prosecute. *Id.* The Court advised Plaintiff that failure to respond by April 5, 2018
17 would result in dismissal of the action pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff
18 has not responded.

19 Accordingly, for the reasons discussed below, the action is DISMISSED.

20 **I. BACKGROUND**

21 Plaintiff Kennetha Bruner filed this action on September 8, 2015, asserting a single claim
22 under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., based on Defendant's alleged
23 inaccurate credit reporting regarding Plaintiff's criminal history. Compl., ECF 1. Plaintiff failed
24 to appear at the Initial Case Management Conference scheduled for January 28, 2016. Minute
25 Entry, ECF 21. The Court issued an Order to Show Cause Re: Sanctions, which was dissolved
26 after Plaintiff's counsel filed a declaration stating that her failure to appear was due to a
27 calendaring error. Order to Show Cause, ECF 20; Tatar Decl., ECF 22; Order Dissolving Order to
28 Show Cause, ECF 23. The Court rescheduled the Case Management Conference for March 17,

2016, at which time the Court set the Final Pretrial Conference for March 15, 2018 and trial for April 9, 2018. Case Management Order, ECF 25. On December 7, 2017, the Court issued an order resetting the Final Pretrial Conference for March 22, 2018. Order Resetting PTC, ECF 34.

On January 26, 2018, the Court issued an order referring the case to Magistrate Judge Susan van Keulen for settlement. Order of Reference, ECF 35. Based on the docket, it does not appear that the parties scheduled a settlement conference with Judge van Keulen. On March 22, 2018, the Court called the case for the scheduled Final Pretrial Conference, but neither party appeared. Minute Entry, ECF 37. The Court issued an Order to Show Cause Re: Dismissal but, as discussed above, Plaintiff has failed to show cause or respond in any way. Order to Show Cause, ECF 36.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 41(b), a district court may dismiss an action for failure to prosecute or failure to comply with the Federal Rules of Civil Procedure or a court order. Fed. R. Civ. P. 41(b). While Rule 41(b) discusses such dismissal only in the context of a defense motion, both the Supreme Court and the Ninth Circuit have made clear that the rule also permits dismissal by a court sua sponte. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). “A Rule 41(b) dismissal must be supported by a showing of unreasonable delay.” *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010) (internal citation and quotation marks omitted). “In addition, the district court must weigh the following factors in determining whether a Rule 41(b) dismissal is warranted: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits and (5) the availability of less drastic sanctions.’” *Id.* (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

III. DISCUSSION

Plaintiff has unreasonably delayed disposition of this case by failing to appear for the Final Pretrial Conference or to respond to the Court’s Order to Show Cause Re: Dismissal. Moreover, four of the five factors listed above favor dismissal under Rule 41(b). With respect to the first

factor, “[t]he public’s interest in expeditious resolution of litigation always favors dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (internal quotation marks and citation omitted). The second factor also favors dismissal, as Plaintiff’s failure to appear at the Final Pretrial Conference or to respond to the Order to Show Cause Re: Dismissal has impeded the Court’s ability to move this case toward resolution and has required the Court to devote valuable resources to a case which Plaintiff apparently has no intention of prosecuting. The third factor, risk of prejudice to the defendant, is satisfied if the plaintiff’s conduct impairs the defendant’s ability to proceed to trial or threatens to interfere with a decision in the case. *Pagtalunan*, 291 F.3d at 642. The factor is satisfied here, as the Court vacated the trial date based on Plaintiff’s failure to appear at the Final Pretrial Conference. The fourth factor, the public policy favoring disposition of cases on their merits, by definition weighs against dismissal under Rule 41(b). However, the fifth factor favors dismissal because less drastic sanctions are not available given Plaintiff’s failure to appear before the Court, respond to the Order to Show Cause Re: Dismissal, or give any indication that she intends to prosecute this action.

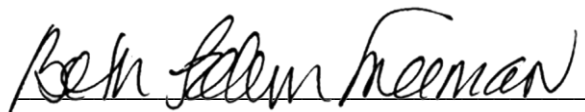
The Court suspects that the parties reached settlement in this case but failed to inform the Court of that circumstance. If that is what occurred, the parties’ discourtesy has resulted in the waste of judicial resources which could have been expended more productively. Whatever the cause of the parties’ failure to appear at the scheduled Final Pretrial Conference or Plaintiff’s failure to respond to the Order to Show Cause Re: Dismissal, the Court finds that dismissal is warranted under Rule 41(b) for the reasons discussed above.

IV. ORDER

This action is DISMISSED pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with a Court order and failure to prosecute.

The Clerk shall close the file.

Dated: April 9, 2018


BETH LABSON FREEMAN
United States District Judge